

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH F. YUHNKE,

Plaintiff,

v.

16-CV-834
ORDER

NANCY A. BERRYHILL, acting
Commissioner of the Social Security
Administration,

Defendant.

On October 20, 2016, the plaintiff commenced this action. Docket Item 1. On February 3, 2017, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(B). Docket Item 9. On June 9, 2017, the plaintiff moved for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 17; on July 25, 2017, the defendant responded and moved for judgment on the pleadings, Docket Item 18; and on August 8, 2017, the plaintiff replied, Docket Item 19. On February 9, 2018, Judge Scott issued a Report and Recommendation finding that the plaintiff's motion should be granted and that the defendant's motion should be denied. Docket Item 20. The parties did not object to the Report and Recommendation, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's

recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Scott's Report and Recommendation. Based on that review and the absence of any objections, the Court accepts and adopts Judge Scott's recommendation to grant the plaintiff's motion and deny the defendant's motion.

For the reasons stated above and in the Report and Recommendation, the plaintiff's motion for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 17, is GRANTED to the extent noted below; the defendant's motion for judgment on the pleadings, Docket Item 18, is DENIED; the decision of the Commissioner is VACATED; and the matter is REMANDED for further administrative proceedings consistent with Judge Scott's Report and Recommendation. The Clerk of the Court shall close the file.

SO ORDERED.

Dated: March 1, 2018
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE